



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 27, 2022

IN THE MATTER OF:

Appeal Board No. 621723

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 621722 and 621723, the claimant appeals from the decisions of the Administrative Law Judge filed March 1, 2022, insofar as they sustained the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, as modified to be effective November 24, 2020 through November 23, 2021; and which sustained the initial determination charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of \$9,600 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) of \$5,400 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of \$8,736 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and charging the claimant with an overpayment of Lost Wages Assistance (LWA) benefits of \$1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), as modified to charge the claimant with a recoverable overpayment of \$5,400 in PEUC benefits and \$3,276 in PUA benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by and on behalf of the claimant. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant, who does not understand or speak English, resides in New York with her brother and her two children, ages five and seven. In 2019, the claimant worked for a restaurant in New York; she then began working as a waitress in a restaurant in Florida. In Florida, the claimant resided in a communal residence obtained by her boss and would work one to two months at a time and then return to New York to be with her children.

On March 17, 2020, the restaurant in Florida closed due to the pandemic and the claimant returned to New York. In addition, since schools closed in New York due to the pandemic, the claimant stayed at home to care for her children as they began remote learning. Since the claimant does not speak English, she sought the assistance of a tax office in New York to file a claim for benefits. On June 11, 2020, the claimant filed a claim for PUA benefits in New York, establishing a base period of the fourth calendar quarter of 2018 through the third calendar quarter of 2019. The claimant earned wages from New York employment in her base period. The claimant was found eligible for PUA benefits in New York by determination dated July 20, 2020 and received PUA and PEUC benefits. The claimant did not file a claim for benefits in Florida.

On November 23, 2021, the Department of Labor (DOL) issued the instant determinations finding the claimant ineligible for PUA benefits on the basis that she must file a PUA claim in Florida where she last worked and charging the claimant with the recoverable overpayments at issue. The DOL did not issue a determination alleging that the claimant obtained the overpaid benefits through fraud or willful misrepresentation.

OPINION: We agree with the Administrative Law Judge's conclusion that the Department of Labor had the requisite jurisdiction to review the claimant's claim for the period of November 24, 2020 through November 23, 2021. Pursuant to Labor Law § 597 (3), any determination regarding a benefit claim may, in

the absence of fraud or willful misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information. The issue of whether a claimant is eligible for PUA benefits is an ongoing, day-to-day, determination and there is no distinction in this regard with respect to determinations involving overpaid federal benefits. We have previously upheld the Commissioner of Labor's ability to recover overpaid federal benefits within one year of the issuance of an ongoing determination

(See, Appeal Board No. 557325). Appeal Board No. 617285 is distinguishable with respect to the question of jurisdiction since that case involved a disqualification determination based on voluntary separation of employment without good cause rather than an ongoing determination of ineligibility. Accordingly, we conclude that the DOL may review the claim and seek repayment of overpaid benefits only within one year of the issuance of the determinations, or from November 24, 2020 through November 23, 2021.

However, we do not agree that the claimant is ineligible for PUA benefits in New York because she was required to file her PUA claim in Florida where she last worked. According to Unemployment Insurance Program Letter (UIPL) 14-20, the programs and provisions of the CARES Act operate in tandem with the fundamental eligibility requirements of the Federal-State Unemployment Insurance program, which remain in place. As such, the laws governing the filing of claims in New York State also pertain to PUA claims filed pursuant to the CARES Act.

As the claimant resided in New York when she was not working in Florida and had earnings in her base period from New York employment, she established the nexus to file a PUA claim in New York. New York Labor Law § 527 sets forth the

criteria for a claimant to file a valid original claim; these criteria include that a claimant has earnings in his or her base period from employers liable for contributions or liable for payments in lieu of contributions. In Appeal Board No. 614206, we found that the claimant who lived in New York but worked in New Jersey was eligible to receive PUA benefits in New York since he had not filed a claim in New Jersey. Significantly, the claimant's credible and uncontested testimony establishes that she did not file a claim in Florida. Accordingly, the evidence fails to establish that the claimant is ineligible for PUA benefits in New York because she was required to file for such benefits in Florida. We therefore conclude that the claimant cannot be held ineligible for PUA benefits on this basis. It follows, and we so conclude, that any benefits the claimant received do not constitute an overpayment.

DECISION: The decisions of the Administrative Law Judge, insofar as appealed from, are reversed.

In Appeal Board Nos. 621722, the initial determinations, holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, as modified to be effective November 24, 2020 through November 23, 2021; and

which sustained the initial determination charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of \$9,600 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) of \$5,400 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of \$8,736 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and charging the claimant with an overpayment of Lost Wages Assistance (LWA) benefits of \$1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), as modified to a recoverable overpayment of \$5,400 in PEUC benefits and \$3,276 in PUA benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER